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| In re                      | :                        |
| McKinzie III, et al.       | : DECISION REGARDING     |
| Application No. 09/845,666 | : PATENT TERM ADJUSTMENT |
| Filed: May 24, 2005        | :                        |
| Patent No. 6,897,831       | :                        |
| Issued: May 24, 2005       | :                        |

This decision is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT", filed June 22, 2005, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The request is **DISMISSED**.

On August 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date was zero (0) days. On May 24, 2005, the application issued into Patent No. 6,897,831 with a patent term adjustment of one hundred twenty-two (122) days. Patentees submitted the instant "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT" on June 22, 2005. Patentees state that they believe there was an error in their favor in the patent term adjustment calculation.

The Office determined a patent term adjustment of one hundred twenty-two (122) days based on an adjustment for PTO delay of sixty-one (61) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and three hundred twenty-eight (328) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.703(b), reduced by seventy-two (72), ninety-five (95), four (4), ninety-three (93), and three (3) days of applicant delay, all pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b).

A review of the application does not reveal any errors in the calculation of the patent term adjustment.

It is noted that applicants filed a terminal disclaimer on March 29, 2004. The provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 C.F.R. § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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